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16 FEDERAL INSURANCE COMPANY

17
18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA
20

21 GARY SIMONS, an individual,

22 Plaintiff,

23 v.

24
25 FEDERAL INSURANCE
26 COMPANY, a New Jersey corporation,

27 Defendant.
28

Case No. 2:23-cv-05074-AB-SKx

Assigned to Hon. Andre Birotte Jr.

STIPULATED PROTECTIVE ORDER

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set forth
11 in Section 12.3 (Filing Protected Material), below, that this Stipulated Protective
12 Order does not entitle them to a file confidential information under seal; Civil Local
13 Rule 79-5 sets forth the procedures that must be followed and the standards that will
14 be applied when a party seeks permission from the court to file material under seal.

15 B. GOOD CAUSE STATEMENT

16 This action is likely to involve customer and pricing lists, and other valuable
17 commercial, financial, and/or proprietary information for which special protection
18 from public disclosure and from use for any purpose other than prosecution of this
19 action is warranted. Such confidential and proprietary materials and information
20 consist of, among other things, confidential business or financial information,
21 information regarding confidential business practices, or other confidential or
22 commercial information (including information implicating privacy rights of third
23 parties), information otherwise generally unavailable to the public, or which may be
24 privileged or otherwise protected from disclosure under state or federal statutes,
25 court rules, case decisions, or common law.

26 Accordingly, to expedite the flow of information, to facilitate the prompt
27 resolution of disputes over confidentiality of discovery materials, to adequately
28 protect information the parties are entitled to keep confidential, to ensure that the

1 parties are permitted reasonable necessary uses of such material in preparation for
2 and in the conduct of trial, to address their handling at the end of the litigation, and
3 serve the ends of justice, a protective order for such information is justified in this
4 matter. It is the intent of the parties that information will not be designated as
5 confidential for tactical reasons and that nothing be so designated without a good
6 faith belief that it has been maintained in a confidential, non-public manner, and
7 there is good cause why it should not be part of the public record of this case.

8 2. DEFINITIONS

9 2.1 Action: *Gary Simons v. Federal Insurance Company*, United States
10 District Court for the Central District of California, Western Division, Case No.
11 2:23-cv-05074-AB-AFM.

12 2.2 Challenging Party: a Party or Non-Party that challenges the
13 designation of information or items under this Order.

14 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
15 how it is generated, stored, or maintained) or tangible things that qualify for
16 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
17 the Good Cause Statement.

18 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
19 their support staff).

20 2.5 Designating Party: a Party or Non-Party that designates information
21 or items that it produces in disclosures or in responses to discovery as
22 “CONFIDENTIAL.”

23 2.6 Disclosure or Discovery Material: all items or information, regardless
24 of the medium or manner in which it is generated, stored, or maintained (including,
25 among other things, testimony, transcripts, and tangible things), that are produced
26 or generated in disclosures or responses to discovery in this matter.

1 2.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as
3 an expert witness or as a consultant in this Action.

4 2.8 House Counsel: attorneys who are employees of a party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 2.9 Non-Party: any natural person, partnership, corporation, association,
8 or other legal entity not named as a Party to this action.

9 2.10 Outside Counsel of Record: attorneys who are not employees of a
10 party to this Action but are retained to represent or advise a party to this Action and
11 have appeared in this Action on behalf of that party or are affiliated with a law firm
12 which has appeared on behalf of that party, including support staff.

13 2.11 Party: any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 2.13 Professional Vendors: persons or entities that provide litigation
19 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium)
21 and their employees and subcontractors.

22 2.14 Protected Material: any Disclosure or Discovery Material that is
23 designated as "CONFIDENTIAL."

24 2.15 Receiving Party: a Party that receives Disclosure or Discovery
25 Material from a Producing Party.

26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only
28 Protected Material (as defined above), but also (1) any information copied or

1 extracted from Protected Material; (2) all copies, excerpts, summaries, or
2 compilations of Protected Material; and (3) any testimony, conversations, or
3 presentations by Parties or their Counsel that might reveal Protected Material.

4 Any use of Protected Material at trial shall be governed by the orders of the
5 trial judge. This Order does not govern the use of Protected Material at trial.

6 4. DURATION

7 Subject to the Parties' subsequent agreement on the handling of Confidential
8 Information at trial to be memorialized in the Parties' Joint Final Pre-Trial
9 Conference Statement, after final disposition of this litigation, the confidentiality
10 obligations imposed by this Order shall remain in effect until a Designating Party
11 agrees otherwise in writing or a court order otherwise directs. Final disposition shall
12 be deemed to be the later of (1) dismissal of all claims and defenses in this Action,
13 with or without prejudice; and (2) final judgment herein after the completion and
14 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
15 including the time limits for filing any motions or applications for extension of time
16 pursuant to applicable law.

17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection.

19 Each Party or Non-Party that designates information or items for protection
20 under this Order must take care to limit any such designation to specific material
21 that qualifies under the appropriate standards. The Designating Party must
22 designate for protection only those parts of material, documents, items, or oral or
23 written communications that qualify so that other portions of the material,
24 documents, items, or communications for which protection is not warranted are not
25 swept unjustifiably within the ambit of this Order.

26 Mass, indiscriminate, or routinized designations are prohibited. Designations
27 that are shown to be clearly unjustified or that have been made for an improper
28 purpose (e.g., to unnecessarily encumber the case development process or to impose

unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or Non-Party that makes original documents available for inspection need not designate them for protection until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the "CONFIDENTIAL legend" to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the

1 Producing Party also must clearly identify the protected portion(s) (e.g., by making
2 appropriate markings in the margins).

3 (b) for testimony given in depositions that the Designating Party identify
4 the Disclosure or Discovery Material on the record, before the close of the
5 deposition all protected testimony.

6 (c) for information produced in some form other than documentary and
7 for any other tangible items, that the Producing Party affix in a prominent place on
8 the exterior of the container or containers in which the information is stored the
9 legend "CONFIDENTIAL." If only a portion or portions of the information
10 warrants protection, the Producing Party, to the extent practicable, shall identify the
11 protected portion(s).

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
13 failure to designate qualified information or items does not, standing alone, waive
14 the Designating Party's right to secure protection under this Order for such material.
15 Upon timely correction of a designation, the Receiving Party must make reasonable
16 efforts to assure that the material is treated in accordance with the provisions of this
17 Order.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
20 designation of confidentiality at any time that is consistent with the Court's
21 Scheduling Order.

22 6.2 Meet and Confer. The Challenging Party Shall initiate the dispute
23 resolution process under Civil Local Rule 37-1 et seq.

24 6.3 The burden of persuasion in any such challenge proceeding shall be
25 on the Designating Party. Frivolous challenges, and those made for an improper
26 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
27 parties), may expose the Challenging Party to sanctions. Unless the Designating
28 Party has waived or withdrawn the confidentiality designation, all parties shall

1 continue to afford the material in question the level of protection to which it
2 is entitled under the Producing Party's designation until the Court rules on the
3 challenge.

4 7. MAINTENANCE, ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that
6 is disclosed or produced by another Party or by a Non-Party in connection with
7 this Action only for prosecuting, defending, or attempting to settle this Action.
8 Such Protected Material may be disclosed only to the categories of persons and
9 under the conditions described in this Order. When the Action has been
10 terminated, a Receiving Party must comply with the provisions of Section 13 below
11 (FINAL DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at
13 a location and in a secure manner that reasonably ensures that access is limited
14 to the persons authorized under this Order.

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
16 otherwise ordered by the Court or permitted in writing by the Designating Party, a
17 Receiving Party may disclose any information or item designated
18 "CONFIDENTIAL" only to:

19 (a) the Receiving Party's Outside Counsel of Record in this Action, as
20 well as employees of said Outside Counsel of Record to whom it is reasonably
21 necessary to disclose the information for this Action;

22 (b) the officers, directors, and employees (including House Counsel) of
23 the Receiving Party to whom disclosure is reasonably necessary for this Action;

24 (c) Experts (as defined in this Order) of the Receiving Party to whom
25 disclosure is reasonably necessary for this Action and who have signed the
26 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

27 (d) the Court and its personnel;

28 (e) court reporters and their staff;

1 (f) professional jury or trial consultants, mock jurors, and Professional
2 Vendors to whom disclosure is reasonably necessary for this Action and who have
3 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (g) the author or recipient of a document containing the information or a
5 custodian or other person who otherwise possessed or knew the information;

6 (h) during their depositions, witnesses, and attorneys for witnesses, in
7 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
8 party requests that the witness sign the form attached as Exhibit A hereto; and (2)
9 they will not be permitted to keep any confidential information unless they sign the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
11 agreed by the Designating Party or ordered by the Court. Pages of transcribed
12 deposition testimony or exhibits to depositions that reveal Protected Material may
13 be separately bound by the court reporter and may not be disclosed to anyone except
14 as permitted under this Stipulated Protective Order. In the event that a witness and/or
15 attorney for a witness refuse to execute the “Acknowledgment and Agreement to Be
16 Bound,” the Court may, upon a Party’s application, enter an order directing the
17 witness or attorney’s compliance with the terms of this Protective Order, or directing
18 such other steps as the Court may deem necessary under the circumstances; and

19 (i) any mediator or settlement officer, and their supporting personnel,
20 mutually agreed upon by any of the parties engaged in settlement discussions;

21 (j) any insurer or reinsurer, and the Parties’ outside or in-house auditors,
22 intermediaries, and accountants of the Parties as necessary in fulfilling their
23 responsibilities;

24 (k) any governmental, regulatory or administrative authorities if
25 required by any such regulatory body or authority;

26 (l) any entity or person to whom any Party, by law, is required to make
27 such disclosure but only after notice to all parties and upon order of the Court, or
28 upon written consent of the Producing Party.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification
7 shall include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order
9 to issue in the other litigation that some or all of the material covered by the
10 subpoena or order is subject to this Protective Order. Such notification shall include
11 a copy of this Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be
13 pursued by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with
15 the subpoena or court order shall not produce any information designated in this
16 action as “CONFIDENTIAL” before a determination by the court from which the
17 subpoena or order issued, unless the Party has obtained the Designating Party’s
18 permission. The Designating Party shall bear the burden and expense of seeking
19 protection in that court of its confidential material, and nothing in these provisions
20 should be construed as authorizing or encouraging a Receiving Party in this Action
21 to disobey a lawful directive from another court.

22 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
23 PRODUCED IN THIS LITIGATION

24 (a) The terms of this Order are applicable to information produced by a
25 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
26 produced by Non-Parties in connection with this litigation is protected by the
27 remedies and relief provided by this Order. Nothing in these provisions should be
28 construed as prohibiting a Non-Party from seeking additional protections.

1 (b) In the event that a Party is required, by a valid discovery request, to
2 produce a Non-Party's confidential information in its possession, and the Party is
3 subject to an agreement with the Non-Party not to produce the Non-Party's
4 confidential information, then the Party shall:

5 (1) promptly notify in writing the Requesting Party and the Non-Party
6 that some or all of the information requested is subject to a confidentiality agreement
7 with a Non-Party;

8 (2) promptly provide the Non-Party with a copy of the Stipulated
9 Protective Order in this Action, the relevant discovery request(s), and a reasonably
10 specific description of the information requested; and

11 (3) make the information requested available for inspection by the Non-
12 Party, if requested.

13 (c) If the Non-Party fails to seek a protective order from this Court within
14 14 days of receiving the notice and accompanying information, the Receiving Party
15 may produce the Non-Party's confidential information responsive to the discovery
16 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
17 not produce any information in its possession or control that is subject to the
18 confidentiality agreement with the Non-Party before a determination by the Court.
19 Absent a court order to the contrary, the Non-Party shall bear the burden and
20 expense of seeking protection in this Court of its Protected Material.

21 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
23 Protected Material to any person or in any circumstance not authorized under this
24 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
25 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
26 to retrieve all unauthorized copies of the Protected Material, (c) inform the person
27 or persons to whom unauthorized disclosures were made of all the terms of this
28

1 Order, and (d) request such person or persons to execute the “Acknowledgment and
2 Agreement to Be Bound” that is attached hereto as Exhibit A.

3 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
4 PROTECTED MATERIAL

5 When a Producing Party gives notice to Receiving Parties that certain
6 inadvertently produced material is subject to a claim of privilege or other protection,
7 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
8 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
9 procedure may be established in an e-discovery order that provides for production
10 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
11 (e), insofar as the parties reach an agreement on the effect of disclosure of a
12 communication or information covered by the attorney-client privilege or work
13 product protection, the parties may incorporate their agreement in the stipulated
14 protective order submitted to the Court.

15 12. MISCELLANEOUS

16 12.1 Right to Relief. Nothing in this Order abridges the right of any person
17 to seek its modification by the Court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this
19 Protective Order, no Party waives any right it otherwise would have to object to
20 disclosing or producing any information or item on any ground not addressed in this
21 Stipulated Protective Order. Similarly, no Party waives any right to object on any
22 ground to use in evidence of any of the material covered by this Protective Order.

23 12.3 Filing Protected Material. A Party that seeks to file under seal any
24 Protected Material must comply with Civil Local Rule 79-5. Protected Material
25 may only be filed under seal pursuant to a court order authorizing the sealing of the
26 specific Protected Material at issue. If a Party’s request to file Protected Material
27 under seal is denied by the court, then the Receiving Party may file the information
28 in the public record unless otherwise instructed by the court.

1 13. FINAL DISPOSITION

2 After the final disposition of this Action, as defined in Section 4
3 (DURATION), within 60 days of a written request by the Designating Party, each
4 Receiving Party must return all Protected Material to the Producing Party or destroy
5 such material. In the alternative, the Receiving Party may keep and maintain
6 Protected Material provided that the Receiving Party shall keep such Protected
7 Material strictly confidential in accordance with the terms of this Order. As used in
8 this subdivision, “all Protected Material” includes all copies, abstracts,
9 compilations, summaries, and any other format reproducing or capturing any of the
10 Protected Material. Whether the Protected Material is returned, destroyed, or
11 maintained, the Receiving Party must submit a written certification to the Producing
12 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
13 deadline that (1) identifies (by category, where appropriate) all the Protected
14 Material that was returned, destroyed, or which will be kept and maintained; and (2)
15 affirms that the Receiving Party has not retained any copies, abstracts, compilations,
16 summaries, or any other format reproducing or capturing any of the Protected
17 Material except for material identified as material that will be kept and maintained.
18 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
19 pleadings, motion papers, trial, deposition, and hearing transcripts, legal
20 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
21 work product, and consultant and expert work product, even if such materials
22 contain Protected Material. All archival copies that contain or constitute Protected
23 Material, and all Protected Material identified as material that will be kept and
24 maintained, remain subject to this Protective Order as set forth in Section 4
25 (DURATION).

26 14. Any violation of this Order may be punished by any and all appropriate
27 measures including, without limitation, contempt proceedings and/or monetary
28 sanctions.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 DATED: March 12, 2024

SAUL EWING LLP

4
5 By: /s/ Dana M. Silva

6 WILLIAM E. ADAMS

7 DANA M. SILVA

8 Attorneys for Plaintiff

GARY SIMONS

9
10 DATED: March 12, 2024

MOUND COTTON WOLLAN &
GREENGRASS LLP

11
12 By: /s/ Renee M. Peters

13 JONATHAN GROSS

14 RENEE M. PETERS

15 Attorneys for Defendant

FEDERAL INSURANCE COMPANY

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17
18 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

19
20 DATED: March 15, 2024

21
22 

23 Honorable Steve Kim

24 United States Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Central District of California
 on [date] in the case of _____ [**insert formal name of the case and the
 number and initials assigned to it by the court**]. I agree to comply with and to be
 bound by all the terms of this Stipulated Protective Order, and I understand and
 acknowledge that failure to so comply could expose me to sanctions and punishment
 in the nature of contempt. I solemnly promise that I will not disclose in any manner
 any information or item that is subject to this Stipulated Protective Order to any
 person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action. I hereby appoint _____ [print
 or type full name] of _____ [print or type
 full address and telephone number] as my California agent for service of process in
 connection with this action or any proceedings related to enforcement of this
 Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____